

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JEHAN SEMPER,

Plaintiff,

v.

JBC LEGAL GROUP, *et al.*,

Defendants.

Case No. C04-2240L

ORDER GRANTING IN PART  
MOTION TO STRIKE AFFIRMATIVE  
DEFENSES

This matter comes before the Court on “Plaintiff’s Motion to Strike Defenses of Defendants.” Having reviewed the memoranda and exhibits filed by the parties, the Court finds as follows:

(1) Plaintiff’s motion to strike is untimely. Pursuant to Fed. R. Civ. P. 12(f), a motion to strike an affirmative defense must be filed within 20 days after service of the answer. Service in this case occurred in December 2004, but plaintiff did not file her motion to strike until March 2005. Nevertheless, the Court will consider plaintiff’s arguments on its own initiative because (a) many of plaintiff’s arguments reflect a fundamental misunderstanding of the role of affirmative defenses and (b) one of the defenses should be stricken as inconsistent with the Court’s case management order.

(2) An affirmative defense generally involves the assertion of a fact or legal theory that, while not part of plaintiff’s underlying claim, would, if proven, avoid or reduce the liabilities

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1 asserted in the complaint. Affirmative defenses can bar recovery altogether or simply limit the  
2 amount of recovery available. Thus, defendants may present defenses aimed at the amount of  
3 damages plaintiff may recover, even if liability is uncontested.

4 (3) Pursuant to Fed. R. Civ. P. 8(b), “[a] party shall state in short and plain terms the  
5 party’s defenses to each claim asserted . . . .” There is no requirement that defendant allege  
6 facts sufficient to support the defenses, as is the case when setting forth a claim under Fed. R.  
7 Civ. P. 8(a). Defendants’ conclusory assertions of contributory negligence, third-party liability,  
8 bad faith, etc. put plaintiff on notice of the defenses defendants intend to pursue. When coupled  
9 with the liberal discovery opportunities available to plaintiff, these disclosures are sufficient to  
10 avoid any surprise at trial.

11 (4) The deadline for amending the pleadings in this matter was April 6, 2005. See Minute  
12 Order Setting Trial Date & Related Dates (filed 2/17/05). Only plaintiff filed a timely motion to  
13 amend her pleading<sup>1</sup> and defendants’ “reservation of rights” does not override or otherwise  
14 extend the Court’s case management deadlines. This “defense” is, therefore, ineffective and will  
15 be stricken. If discovery reveals the existence of an unpled defense, defendants will have to  
16 satisfy the requirements of Fed. R. Civ. P. 15 and overcome any presumption of prejudice that  
17 may arise now that the April 6, 2005, deadline has passed.

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19 For all of the foregoing reasons, plaintiff’s motion to strike is GRANTED as to  
20 defendants’ attempted reservation of the right to plead additional defenses and DENIED as to  
21 defendants’ other four affirmative defenses.

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24 <sup>1</sup> On April 11, 2005, defendants filed a document entitled “JBC’s Response to Plaintiff’s Motion  
25 to Compel Discovery, Impose Sanctions Against Defendant and Extension of Time to File Amended  
26 Pleadings.” Despite its title, neither the document nor the proposed order supplied by defendants  
discusses or seeks relief from the April 6th amended pleading deadline.

DATED this 18th day of April, 2005.



Robert S. Lasnik  
United States District Judge